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# In the
# Supreme Court of the United States

OCTOBER TERM, 1940

No. 163

J. FRIEDMAN, SYDNEY C. JOHNSON, C. O. MOON, ET. AL.
Petitioners,

*versus*

CITY OF ATLANTA, WILLIAM B. HARTSFIELD, as Mayor of the City of Atlanta, et. al.
Respondents.

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

## BRIEF FOR RESPONDENTS IN OPPOSITION

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*Of Counsel:*

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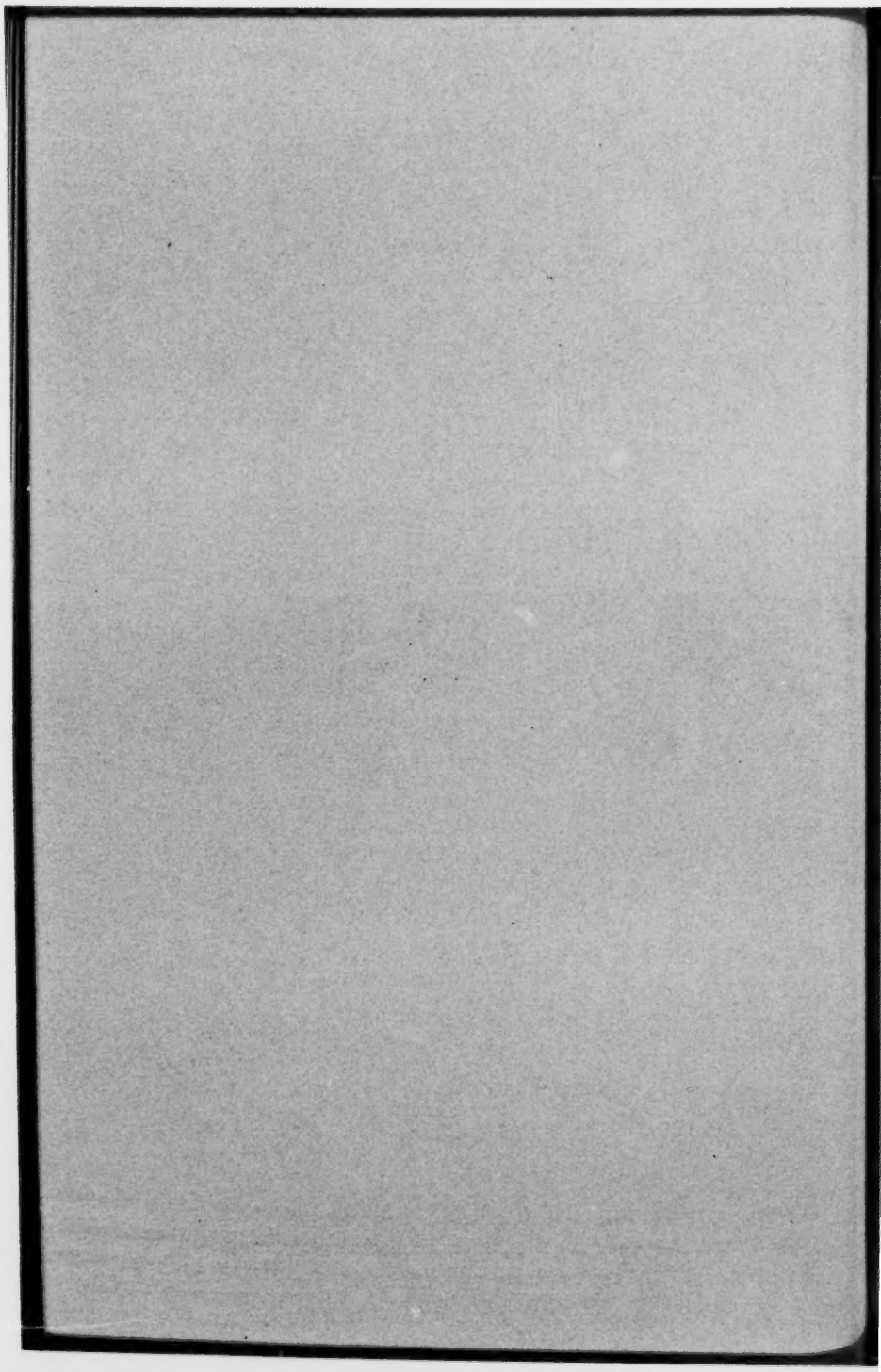
WILLIAMS PTG. CO-ATLANTA



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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENTS IN OPPOSITION

## OPINION BELOW

The opinion of the Supreme Court of Georgia dated March 13, 1940 (R. 17, 18), is reported at 189 Georgia 862 (7 S. E. (2d) 911).

## JURISDICTION

The judgment of the Supreme Court of Georgia was entered on March 13, 1940 (R. 21).

The order of the Supreme Court of Georgia denying a petition for rehearing was entered on March 26, 1940 (R. 24).

The petition for certiorari was filed June 18, 1940. Notice

of the filing of the petition, together with a copy of the petition, printed record and supporting brief, was served on respondents June 22, 1940. The jurisdiction of this court is invoked by petitioners under Section 237 of the Judicial Code as amended (28 U. S. C. A. 344 (b)).

## STATEMENT OF CASE

The statement of the matter involved in this petition for certiorari is correctly set out on pages 4 and 5 of said petition. The Superior Court of Fulton County, Georgia, which was the trial court, heard the case on the demurrers of the defendants, respondents herein, and on July 28, 1939, sustained the demurrers of the respondents herein and dismissed the petition (R. 12, 13). The Supreme Court of Georgia affirmed the judgment of the trial court on the ground that the petition for equitable relief was based not on interference with a property right, but on mere fear or apprehension of such interference. (R. 18).

The Supreme Court of Georgia specifically stated in its opinion:

> "No decision is made or intended as to constitutionality of the ordinance." (R. 18).

## REASONS WHY THE PETITION FOR CERTIORARI SHOULD NOT BE GRANTED

No federal question was decided by the Supreme Court of Georgia. On the contrary the court specifically declined to pass on the Federal question which was presented, and based its decision purely on matters of state practice and state law. There is, therefore, no question which is reviewable by this court in this case.

See *Brown v. Atwell*, 92 U. S. 327, 23 L. Ed. 511, wherein the court said:

> "We have often decided that it is not enough to give

us jurisdiction over the judgments of the state courts, for the record to show that a Federal question was argued or presented to a court for decision. It must appear that its decision was necessary to the determination of the case, and that it was actually decided, or that the judgment, as rendered, could not have been given without deciding it."

To the same effect see:

*Citizens Bank v. Board of Liquidation,*
98 U. S. 140, 25 L. Ed. 114.

*Murdock v. Memphis,*
20 Wall. 590, 87 U. S. 429, 22 L. Ed. 429.

The case of *Chouteau v. Gibson,* 4 S. Ct. 340, 111 U. S. 200, 28 L. Ed 400, holds as follows:

"To give the supreme court jurisdiction on the ground that a federal question is involved, it must appear affirmatively on the face of the record, not only that a federal question was raised and presented to the highest court of the state for decision, but that it was decided, or that its decision was necessary to the judgment or decree rendered in the case."

See also to the same effect:

*Adams County v. Burlington & M. R. R. Co.,*
5 S. Ct. 77, 112 U. S. 123, 28 L. Ed. 678.

*Detroit City Ry. Co. v. Guthard,*
5 S. Ct. 811, 114 U. S. 133, 29 L. Ed. 118.

## CONCLUSION

It is respectfully submitted, therefore, that in order for this court to assume jurisdiction in this case it must appear that a federal question not only was raised, but was decided, or its decision was necessary to a determination of the case in the state court. Although a federal question was presented to the state court it appears on the face of the record that this question

was not decided. Nor was a decision of this federal question necessary to a determination of the case in the state court, the decision having turned purely on a question of state practice and state law. We, therefore, respectfully submit that under the decisions of this court no question is presented which is reviewable by this court.

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